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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN,
Petitioner,

vs.

CHESTER BOWLES, Price Administrator,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Emergency Court of Appeals
and
BRIEF IN SUPPORT THEREOF.

EVELYN FLYNN,
530 Larkin Street, San Francisco,
Petitioner in Propria Persona.

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PETITION FOR WRIT OF CERTIORARI
to the United States Emergency Court of Appeals.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, Evelyn Flynn, prays that a writ of certiorari issue to review the judgment of the United States Emergency Court of Appeals in the cause entitled Flynn v. Bowles, No. 87, which became final on December 15, 1943, on the denial by said Court of petitioner's motion for rehearing therein.

In support thereof the petitioner respectfully represents to this Honorable Court as follows:

SUMMARY AND STATEMENT OF THE MATTER INVOLVED.

Heretofore, to-wit, on September 27, 1943, a complaint was duly filed by petitioner in the United States Emergency Court of Appeals, complaining against the Administrator of the Office of Price Administration because of the denial of her protest duly filed with said Administrator on September 13, 1943, and denied by him on September 14, 1943. Said complaint was duly docketed as cause No. 87 in said Court and came on for hearing on respondent's motion to dismiss filed October 11, 1943. It then appearing that subsequently to the denial of said protest by the San Francisco office of respondent, as charged in the complaint, and subsequently to the filing of said complaint, respondent had also caused an order to be issued by his Washington, D.C. office dismissing said protest, the motion to dismiss the complaint filed October 11, 1943, was denied by the Court and on motion of petitioner the complaint was amended by adding to paragraph II thereof the following, to-wit:

> "The protest was also dismissed by an order of the Administrator of the Office of Price Administration dated October 9, 1943."

The order of the Court was issued without prejudice to the right of respondent to move for dismissal of the amended complaint. Such motion was thereafter

filed by respondent on November 18, 1943, and after hearing thereon, judgment was entered by said Court on December 2, 1943, dismissing said complaint, and on motion duly made for a rehearing or modification of said judgment the Court denied said motion by its final order dated December 15, 1943.

There is included herewith and certified to be correct by the clerk of the United States Emergency Court of Appeals, a transcript of record of said cause in said Court, and copies of the complaint as amended.

SUBJECT MATTER OF COMPLAINT AND PROTEST.

The complaint and the protest precedent thereto each raised the following questions or issues.

(1) The validity of Maximum Rent Regulation No. 28, as applied to petitioner and her rights and property, with particular regard to the manner in which respondent under authority thereof had withheld her property from petitioner since November 9, 1943.

(2) The validity of the rent control and procedural provisions of the Emergency Price Control Act of 1942, as applied to petitioner's rights and property with particular regard to the manner in which her property was confiscated by respondent thereby after November 9, 1943.

(3) The validity of procedural regulations issued by respondent pursuant to the Act and particularly

Procedural Regulation No. 3, with regard to its effect upon petitioner and the manner in which the confiscation of petitioner's property was facilitated thereby.

The complaint charges in part, and the protest alleged, that under authority of the above cited Act and regulations her property had been taken and withheld from her without just compensation and without due process in violation of the Fifth Amendment to the Constitution of the United States, and that each of the provisions and regulations are invalid and unconstitutional and Maximum Rent Regulation No. 28 is contrary to law, arbitrary, capricious, discriminatory and generally unfair and inequitable on grounds shown more fully in proceedings between respondent and petitioner prior to the filing of the protest and incorporated therein by reference, all of said grounds having arisen after the expiration of sixty days from the date of issuance of Maximum Rent Regulation No. 28.

The complaint further charges and the protest precedent thereto also charged that respondent had abused the powers granted by the Act; that he had restrained petitioner from collecting a proper or agreed rental for the use of her property and had refused upon her application to inform her as to what rents she could charge; that as a result she was prevented from collecting just, or in many instances any, compensation for the use of her property of a value of $15,000.00 in the possession of tenants; that said property consisting of furnishings

was being worn out and depleted without compensation to her; that by injunctive process and his failure and refusal to grant permission upon her application respondent is unlawfully preventing her from recovering possession of her property; that it is the desire and purpose of respondent to destroy the rights and property of petitioner for the reasons therein stated; that such destruction may be effected by delaying petitioner in her efforts to obtain judicial review of respondent's acts and conduct by a Court of competent jurisdiction and authority; that he has deliberately delayed her for many months as stated therein and seeks to further delay her; that all the foregoing and other allegations made are supported by the records of the various proceedings between respondent and petitioner and incorporated in protest and complaint by reference.

In conformity with the requirement of Section 1300.219 (f) of Revised Procedural Regulation No. 3 of the Office of Price Administration, the Protest specified the facts commencing with the filing of an action against her by respondent on November 9, 1942, which constituted the grounds upon which her protest against Maximum Rent Regulation No. 28 and the various provisions of the Act and procedural regulations were based. All of said facts and grounds being shown by the dates given to have arisen after the expiration of sixty days from the dates of issuance of Maximum Rent Regulation No. 28, and Procedural Regulation No. 3. The protest further contained on the first page thereof a statement that it

was against Maximum Rent Regulation No. 28, and against the procedural regulations issued pursuant to the Act, and specified the date of issuance of Maximum Rent Regulation No. 28, as being June 30, 1942, and further specified the date of issuance of Procedural Regulation No. 3 with sufficient exactness as there shown, all in conformity with Section 1300.217 (b) and (c) of Revised Procedural Regulation No. 3, which provides for the "Form of Protest" where the "Protest" is against a maximum rent regulation.

STATEMENT OF JURISDICTION.

The jurisdiction of this cause is specifically vested in this Honorable Court by the provisions of the Emergency Price Control Act of 1942. Section 204(d) of said Act provides in part as follows:

> "Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, * * *" (of the Act).

(Section 2 of the Act referred to in the above quotation is the section authorizing rent and price control and covers the regulations and matters herein at issue.)

The petitioner has duly followed the procedure set forth in Sections 203 and 204 of the Act and the subject matter of her protest and cause in the Emergency Court of Appeals is that specified in the appropriate provisions of the Act as herein set forth.

QUESTIONS PRESENTED.

The questions presented are as follows:

1. Does the complaint as amended state a claim upon which relief can be granted?

2. Does the United States Emergency Court of Appeals and the Supreme Court of the United States upon review of judgments and orders thereof have jurisdiction to grant any relief under the complaint as amended upon a proper proof by the complainant of the allegations therein contained?

3. May the Administrator of the Office of Price Administration lawfully avoid a review by the United States Emergency Court of Appeals of his alleged unlawful regulations, orders and acts by dismissing petitioner's protest against such regulations and other matters and directing that said protest is to be considered by his subordinates as an "Application for Review" of an order issued by him subsequently to the filing of said protest.

4. May the Administrator lawfully deprive petitioner of the right of review provided for in Sections 203 and 204 of the Act by refusing to consider

her protest on its merits and dismissing it rather than denying it?

5. Did the Emergency Court of Appeals err in—

(a) Dismissing the Complaint?

(b) Refusing to inform petitioner of the grounds upon which said complaint was dismissed?

(c) Refusing to inform petitioner how to properly bring the matters set forth in her complaint before the Court?

(d) Refusing to remand the proceedings with instructions as prayed in her petition for rehearing or modification of judgment?

(e) Refusing to grant petitioner declaratory relief as prayed in her complaint and petition for rehearing?

In the event this Honorable Court should determine that the dismissal of her complaint was valid under the provisions of the Emergency Price Control Act of 1942, petitioner respectfully prays a ruling on the following question raised thereby.

6. Are the exclusive jurisdiction provisions of Section 204(d) of the Emergency Price Control Act of 1942 valid under the due process clause of the Fifth Amendment to the Constitution of the United States as they are applied to this petitioner, having regard to the fact that petitioner's property has been withheld from her for fourteen months against her

will and without just compensation through the agency of a Court which has been deprived by said exclusive jurisdiction provisions of the right to "consider the validity of any * * * regulation, order or price schedule" under authority of which the power of said Court was invoked and exercised against petitioner?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

Your petitioner respectfully informs this Honorable Court that the issues raised in this case are of the utmost importance to her and her health, liberty and property. They are also of wide general interest to all persons subject to regulations of the Office of Price Administration, whose right of appeal and review may be delayed or abridged as the petitioner's has been in the case at bar.

The issues raised in the complaint are of substantial and vital importance and widespread interest; have been the subject of various conflicting Court decisions and have never been passed upon by this Honorable Court which has been given final jurisdiction thereof.

Under the provisions of the Emergency Price Control Act of 1942 the United States Emergency Court of Appeals created by that Act is the first Court to which any person aggrieved by the regulations or orders of the Administrator, respondent herein, may apply for relief. All other Courts except the Su-

preme Court upon review of decisions of the Emergency Court of Appeals have been prohibited by Section 204(d) of said Act from even "considering the validity" of any such regulation or order, notwithstanding that such other Courts are required by Section 205(a) of said Act to enforce such orders and regulations.

As hereinbefore stated under the heading of "Subject Matter of Complaint and Protest" respondent has confiscated and withheld petitioner's property from her for fourteen months, during which time he has enjoined her from collecting just compensation therefor and from recovering possession thereof, and during which time said property is being worn out and depleted and her equity therein is being destroyed. Respondent has enjoined the collection of proper or agreed rentals for the use of this property and has refused to instruct petitioner as to what rental she may collect.

The effect of the dismissal of petitioner's complaint is that her property is still withheld from her in violation of the due process and just compensation clauses of the Fifth Amendment to the Constitution.

As stated in petitioner's petition for rehearing or modification of judgment, this petitioner was forced to sell a portion of her property because of the situation in which she was placed by respondent as charged in the complaint. Respondent now seeks to utterly destroy this petitioner's rights and equity by compelling her to refund to the purchasers of her

property the sums they have paid on the purchase price thereof, requiring petitioner to permit the purchasers to retain possession of said property without payment therefor, and knowing full well that this petitioner has not the financial means of instituting and carrying on the lengthy process of petition, application for review, protest, and appeals necessary to obtain relief under the procedure which he seeks to impose upon her. This procedure tested by the time respondent has taken to act upon the various proceedings incorporated in the protest filed by petitioner precedent to her complaint herein, would consume not less than twenty-two months exclusive of any appeal to this Honorable Court, and the cost would be prohibitive to this petitioner. In each of the proceedings on which petitioner is testing this time the petitioner and other parties involved were promised expeditious treatment, but petitioner again charges as charged in her complaint and protest that these procedures were deliberately delayed by respondent in order that he might avoid a review of his unlawful acts. The Federal District Court by the agency of which respondent is enforcing his regulations and orders against petitioner has refused to consider the validity of such regulations and orders, considering itself prohibited from doing so by Section 204(d) of the Act.

Petitioner realizes that in ordinary Court procedure under the circumstances of this case the questions properly before this Honorable Court would be solely those questions relating to the dismissal of her

complaint by the lower Court, but Petitioner respectfully submits that this is not an ordinary case. In this case petitioner's property has been withheld from her for fourteen months and she is being threatened with imprisonment and fines if she will not give up the equities that remain. The Court to which petitioner is required to apply in the first instance for relief from this situation is a Court created by the very statute and sections thereof which are challenged in the complaint. A decision favorable to this petitioner in every respect as prayed in her complaint would result in the abolishment of said Court and would return to every Court the right and duty to enforce the "bill of rights" and the safeguards provided in the Constitution of the United States.

Petitioner respectfully submits that the due process guaranteed by the Fifth Amendment to the Constitution, as well as the right of review granted in Section 204 of the Act, require a review by this Honorable Court of the facts of this case. Without such review this petitioner will suffer irreparable injury and her constitutional rights will have been trampled upon with impunity. The injury resulting if a writ is denied will extend far beyond its effect upon this petitioner. By such denial respondent will be encouraged and sustained in practices which will shock the conscience of the Court when fully disclosed.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States

Emergency Court of Appeals to the end that the judgment of the United States Emergency Court of Appeals may be reviewed and remanded by this Honorable Court with such instructions as may be proper.

Dated, San Francisco, California,
January 8, 1944.

EVELYN FLYNN,
Petitioner in Propria Persona.

State of California,
City and County of San Francisco.—ss.

Evelyn Flynn, being first duly sworn, deposes and says:

That she is the petitioner in the foregoing petition for writ of certiorari and that she has read the petition and knows the contents thereof and that the same is true of her own knowledge except as to those matters therein stated on information and belief, and as to those matters she believes it to be true.

EVELYN FLYNN.

Subscribed and sworn to before me this 8th day of January, 1944.

(Seal) ELLA COOK KELLY,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires December 23, 1944.